

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEXTER WALLACE,

Petitioner,

Case No. 1:08-cv-947

v.

Honorable Robert J. Jonker

KENNETH McKEE,

Respondent.

ORDER OF TRANSFER

This is a habeas corpus proceeding brought by a state prisoner pursuant to 28 U.S.C. § 2254. It appears venue was transferred to this Court from the Eastern District of Michigan in error.

Petitioner filed an earlier habeas corpus action in the Eastern District on June 9, 1998. *See Wallace v. Wolfenbarger*, No. 2:08-cv-12456 (E.D. Mich.) At that time, Petitioner was incarcerated at the Macomb Correctional Facility. Since Petitioner had been convicted in the Ingham County Circuit Court, venue was proper in either district. *See* 28 U.S.C. § 2241(d) (a habeas petition may be filed either in the district where the petitioner is in custody or in the district in which the petitioner was convicted). That case remains pending in the Eastern District.

On September 22, 2008, the instant action was opened in the Eastern District. *See Wallace v. McKee*, 2:08-cv-14067 (E.D. Mich.) By that time, Petitioner had been transferred to the Bellamy Creek Correctional Facility in Ionia, so the Eastern District transferred the case, *Wallace v. McKee*, to this Court on venue grounds. However, a review of the pleadings indicates that Petitioner had intended to file a motion to amend his petition in Case No. 2:08-cv-12456, not to file a new petition challenging the same criminal conviction. The pleadings in the present case include a motion to file an

amended habeas petition with Case No. 2:08-cv-12456 in the caption. Petitioner wishes to raise a fifth ground for habeas corpus relief that was not included in the original petition filed in Case No. 2:08-cv-12456. Because it appears that Case No. 2:08-cv-14067 was inadvertently opened as a new case and transferred to this Court in error, this Court will transfer it back to the Eastern District of Michigan. Therefore:

IT IS ORDERED that this case is hereby transferred to the United States District Court for the Eastern District of Michigan pursuant to 28 U.S.C. § 1406(a).

Dated: April 8, 2009

/s/ Hugh W. Brenneman, Jr.
HUGH W. BRENNEMAN, JR.
United States Magistrate Judge